



### **FACTUAL HISTORY**

On December 20, 2003 appellant, then a 63-year-old transportation security screener, filed a traumatic injury claim alleging that he twisted his foot and fell to the floor, injuring his right knee and neck. The Office accepted his claim for a right knee and left ankle sprain. It later accepted a tear in the body and horn of the right medial meniscus and right chondromalacia. Effective February 5, 2004, appellant was placed on the periodic compensation rolls to receive compensation for temporary total disability. In notes dated March 18, 2004, Dr. Gregory Montalbano, an attending Board-certified orthopedic surgeon, stated that his left ankle sprain had resolved, but he continued to have right knee pain. On May 26, 2004 appellant underwent right knee surgery performed by Dr. Montalbano, to repair a medial and lateral meniscus tear, a posterior cruciate ligament sprain and chondromalacia. On April 19, 2006 he underwent left ankle arthroscopic surgery consisting of debridement, synovectomy, chondroplasty, removal of a loose body, drilling of osteochondral lesion and excision, tibia exostosis. Following the left ankle surgery, Dr. Montalbano found continuing right knee and left ankle pain.

In a May 25, 2007 report, Dr. Robert Israel, a Board-certified orthopedic surgeon and an Office referral physician, reviewed appellant's medical history and provided findings on physical examination. He stated that the accepted right knee and left ankle conditions had completely resolved and the physical examination was within normal limits. There were no objective findings of continuing disability. Dr. Israel indicated that appellant could perform his regular job.

By letter dated August 24, 2007, the Office advised appellant of its proposed termination of his wage-loss compensation and medical benefits on the grounds that the weight of the medical evidence established that he had no remaining disability or medical condition causally related to his December 20, 2003 employment injury. In response, appellant submitted a September 4, 2007 report in which Dr. Montalbano stated that he continued to be symptomatic from his accepted right knee and left ankle conditions and was unable to work.

On October 16, 2007 the Office determined that there was a conflict in the medical opinion evidence between Drs. Montalbano and Israel. It referred appellant, together with a statement of accepted facts, a list of questions and the entire case file, to Dr. Stanley Soren, a Board-certified orthopedic surgeon.

In an October 29, 2007 report, Dr. Soren reviewed the medical history, including diagnostic tests. He provided detailed findings on physical examination. Appellant walked with a cane in his left hand but with a normal gait. There was no indication of any antalgic gait or favoring one extremity over the other. Appellant could stand on his heels and toes without difficulty. His right knee had well-healed arthroscopic incisions with no erythema, portal tenderness, inflammation or drainage. There was mild tenderness relative to the medial joint line. Range of motion was normal. Cruciate and collateral ligaments were intact bilaterally. McMurray, Apley, Drawer and Lachman signs were negative in both knees. There was no instability. Quadriceps strength was good bilaterally. Appellant's left ankle had well-healed arthroscopic incisions with no erythema or drainage. There was no tenderness anywhere. There was good dorsalis pedis pulse, popliteal pulse and femoral pulse. There was no gross deformity

or instability. Neurovascular status, temperature, and color were normal. The Achilles tendon was nontender, intact and had no indication of any inflammation. There was minimal restricted dorsiflexion and plantar flexion in the left ankle. Dr. Soren diagnosed a contusion of the right knee, right knee medial and lateral meniscal tear with posterior cruciate ligament sprain and chondromalacia, status post arthroscopic surgery, left ankle osteochondral lesion, synovitis, tibial exostosis with impingement, loose body and left ankle sprain, status post arthroscopic surgery and marked overweight status.<sup>1</sup> He stated that there had been good healing and recovery from appellant's right knee and left ankle surgeries. Appellant's residual complaints were due to degenerative changes and chronic weight overload to the weight bearing joints of the knee and ankle. Dr. Soren stated that there was no further need for medical treatment of the accepted right knee and left ankle conditions. He recommended a medically supervised weight reduction program to reduce the pressure on the knee and ankle which had produced degenerative changes in the joints and appellant's current symptomatology.

In a December 27, 2007 report, Dr. Montalbano reviewed the medical history and provided findings on physical examination. He stated that appellant's right knee and left ankle symptoms had never subsided and he remained totally disabled for work. Dr. Montalbano stated that appellant had a prolonged course of rehabilitation following his right knee injury and surgery. Appellant continued to have pain, swelling, and episodes of instability. Dr. Montalbano recommended continued medical treatment. He noted that the right knee partial meniscectomy resulted in loss of cushioning tissue. Appellant continued to have left ankle pain and used a cane to arise from a seated position and to walk. His surgery did not replace lost cartilage and so it was not corrective but only helped to alleviate and better control his symptoms. Appellant would likely continue to experience left ankle pain. In reports dated January 28 and July 10, 2008, Dr. Montalbano continued to state that his right knee and left ankle were symptomatic, appellant needed continued medical treatment and he was disabled for work.

By decision dated August 1, 2008, the Office terminated appellant's wage-loss compensation and medical benefits effective August 31, 2008 on the grounds that the weight of the medical evidence established that he had no continuing disability or medical condition causally related to his December 20, 2003 employment-related right knee and left ankle conditions.

Appellant requested reconsideration and submitted additional medical evidence. In a September 18, 2008 report, Dr. Montalbano explained his disagreement with Dr. Israel's report. He opined that appellant had structural/mechanical problems in his right knee and left ankle related to the December 20, 2003 employment injury, which caused his symptoms and disability.

By decision dated December 17, 2008, the Office denied modification of the August 1, 2008 decision.

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<sup>1</sup> Dr. Soren reported that appellant was six feet tall and weighed 285 pounds.

### **LEGAL PRECEDENT -- ISSUE 1**

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation benefits.<sup>2</sup> The Office may not terminate compensation without establishing that the disability ceased or that it is no longer related to the employment.<sup>3</sup> The Office's burden of proof includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.<sup>4</sup> Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, the Office must establish that a claimant no longer has residuals of an employment-related condition that require further medical treatment.<sup>5</sup>

Section 8123(a) of the Federal Employees' Compensation Act provides that, "if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary [of Labor] shall appoint a third physician who shall make an examination."<sup>6</sup> Where a case is referred to an impartial medical specialist for the purpose of resolving a conflict, the opinion of such specialist, if sufficiently well rationalized and based on a proper factual and medical background, must be given special weight.

### **ANALYSIS -- ISSUE 1**

Appellant's claim for an injury on December 20, 2003 was accepted for a right knee and left ankle sprain, a tear in the body and horn of the right medial meniscus and right chondromalacia. Dr. Montalbano found continuing work-related disability. Dr. Israel found no residual disability or medical condition. The Office properly determined that there was a conflict in the medical opinion evidence. It referred appellant, together with a statement of accepted facts, a list of questions and the entire case file, to Dr. Soren for an impartial medical specialist examination to resolve the conflict.

Dr. Soren provided a comprehensive report dated October 27, 2007. He was provided with appellant's case file and a statement of accepted facts. Dr. Soren reviewed appellant's medical history, including diagnostic tests, and provided detailed findings on physical examination. Appellant walked with a cane in his left hand but with a normal gait. There was no indication of any antalgic or favoring one extremity over the other. Appellant could stand on his heels and toes without difficulty. His right knee had well-healed arthroscopic incisions with no erythema, portal tenderness, inflammation or drainage. There was mild tenderness relative to the medial joint line. Cruciate and collateral ligaments were intact bilaterally. McMurray, Apley, Drawer and Lachman signs were negative in both knees. There was no instability.

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<sup>2</sup> *I.J.* 59 ECAB \_\_\_\_ (Docket No. 07-2362, issued March 11, 2008); *Fermin G. Olascoaga*, 13 ECAB 102, 104 (1961).

<sup>3</sup> *J.M.*, 58 ECAB \_\_\_\_ (Docket No. 06-661, issued April 25, 2007); *Anna M. Blaine*, 26 ECAB 351 (1975).

<sup>4</sup> *T.P.*, 58 ECAB \_\_\_\_ (Docket No. 07-60, issued May 10, 2007); *Larry Warner*, 43 ECAB 1027 (1992).

<sup>5</sup> *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

<sup>6</sup> 5 U.S.C. § 8123(a); *see also Raymond A. Fondots*, 53 ECAB 637 (2002); *Rita Lusignan (Henry Lusignan)*, 45 ECAB 207 (1993).

Quadriceps strength was good bilaterally. Appellant's left ankle had well-healed arthroscopic incisions with no erythema or drainage. There was no tenderness anywhere. There was good dorsalis pedis pulse, popliteal pulse and femoral pulse. There was no gross deformity or instability. Neurovascular status, temperature and color were normal. The Achilles tendon was nontender, intact and had no indication of any inflammation. There was minimal restricted dorsiflexion and plantar flexion in the left ankle. Dr. Soren diagnosed a contusion of the right knee, right knee medial and lateral meniscal tear with posterior cruciate ligament sprain and chondromalacia, status post arthroscopic surgery, left ankle osteochondral lesion, synovitis, tibial exostosis with impingement, loose body and left ankle sprain, status post arthroscopic surgery and marked overweight status. He stated that there had been good healing and recovery from the right knee and left ankle surgeries. Appellant's residual complaints were due to chronic weight overload to the weight bearing joints of the knee and ankle and degenerative changes. Dr. Soren stated that there was no further need for medical treatment of the accepted conditions. He recommended a weight reduction program to reduce the pressure on the knee and ankle which had caused degenerative changes in the joints and appellant's current symptomatology.

The report of Dr. Soren is based upon a complete and accurate factual and medical background and detailed findings on physical examination. He is a Board-certified orthopedic surgeon, an appropriate field for evaluating appellant's right knee and left ankle conditions. The Board finds that Dr. Soren's thorough and well-rationalized report established that appellant had no continuing disability or medical condition causally related to his December 20, 2003 accepted right knee and left ankle conditions. Accordingly, the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective August 31, 2008, based on the medical opinion of Dr. Soren that the accepted right knee and left ankle conditions had resolved.

On appeal, appellant argues that the Office failed to properly develop the medical evidence and to accept all injury-related conditions. However, it referred him for both a second opinion and an impartial medical specialist examination. Dr. Israel was provided with copies of medical records and Dr. Soren received the entire file. Both physicians were asked to provide diagnoses. Dr. Soren found residuals and continuing symptoms but opined that these were caused by degenerative changes due to weight and not to the accepted right knee and left ankle conditions. Therefore, this argument is not persuasive. Appellant asserts that the Office improperly referred him for a second opinion examination and a referee examination. The Act states that, "An employee shall submit to examination by a medical officer of the United States, or by a physician designated or approved by the Secretary of Labor, after the injury and as frequently and at the times and places as may be reasonably required."<sup>7</sup> It was reasonable for the Office to refer appellant to Dr. Israel in order to more fully determine the nature and extent of his work-related disability. As there was a conflict in opinion between Dr. Montalbano and Dr. Israel, the Office properly referred him to Dr. Soren for an impartial medical specialist examination.

Appellant argues that Dr. Israel's medical opinion was not sufficient to create a conflict with Dr. Montalbano. He asserts that Dr. Israel's report predated the Office's August 1, 2008

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<sup>7</sup> 5 U.S.C. § 8123(a).

termination decision by 15 months, was superficial and inconclusive, failed to note evidence of continuing work-related disability and lacked sufficient medical rationale. However, the notice of proposed termination of compensation and medical benefits was issued only three months following Dr. Israel's examination. Dr. Soren's examination took place only five months after that of Dr. Israel. Appellant argues that Dr. Israel did not carefully review the medical evidence because he noted two surgical portholes instead of three and failed to detect muscle atrophy. He stated that Dr. Israel reported that he had a normal gait when he was unable to walk without a cane. The record reflects that Dr. Israel reviewed Dr. Montalbano's reports but, at the time of Dr. Israel's examination, he found no evidence of muscle atrophy. Regarding the number of surgical portholes reported on physical examination, the fact that Dr. Israel reported three, rather than two does not establish that he did not read the medical reports or that Dr. Israel's opinion is insufficient to create a conflict. Dr. Israel found that appellant's gait was normal at the time of his examination.<sup>8</sup> There is insufficient evidence that his opinion failed to create a conflict with Dr. Montalbano's opinion. Appellant further argues that Dr. Soren's opinion is not entitled to special weight. The Board finds that Dr. Soren's report is entitled to special weight as the impartial medical specialist. Therefore, this argument is without merit.

### **LEGAL PRECEDENT -- ISSUE 2**

Where the Office meets its burden of proof in justifying termination of compensation benefits, the burden is on the claimant to establish that any subsequent disability is causally related to the employment injury.<sup>9</sup> In order to prevail, the employee must establish by the weight of the reliable, probative and substantial evidence that he or she had an employment-related disability which continued after termination of compensation benefits.<sup>10</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that, following the proper termination of appellant's compensation and medical benefits on August 31, 2008, he failed to establish that he had any continuing disability or medical condition causally related to his December 20, 2003 employment-related right knee and left ankle conditions.

In a September 18, 2008 report, Dr. Montalbano explained his disagreement with Dr. Israel's report. He opined that appellant had structural/mechanical problems in his right knee and left ankle related to the December 20, 2003 employment injury which caused his symptoms and disability. The Board notes that Dr. Montalbano had been on one side of the conflict in medical evidence and the September 18, 2008 report basically reiterates his previous findings. An additional report from appellant's physician, which essentially repeats earlier findings and conclusions, is generally insufficient to overcome the weight accorded to an impartial medical specialist's report where his physician had been on one side of the conflict in the medical opinion

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<sup>8</sup> Dr. Soren observed that appellant had a cane in his hand at the time of his examination but his gait was normal.

<sup>9</sup> *I.J.*, *supra* note 2; *Anna M. Blaine*, 26 ECAB 351, 353-54 (1975); *see Fred Foster*, 1 ECAB 127, 132-33 (1948).

<sup>10</sup> *I.J.* *supra* note 2; *Gary R. Sieber*, 46 ECAB 215, 222 (1994); *see Wentworth M. Murray*, 7 ECAB 570-2 (1955).

that the impartial medical examiner resolved.<sup>11</sup> Dr. Montalbano attributed appellant's continuing symptoms and disability to the December 20, 2003 employment injury. However, his opinion constitutes one side of the conflict which Dr. Soren's opinion was found to resolve and, therefore, would not be sufficient to overcome the weight of his report. The Board finds that the September 18, 2007 report of Dr. Montalbano is not sufficient to establish that appellant had any disability or medical condition after August 31, 2008 causally related to his December 20, 2003 right knee and left ankle conditions. Accordingly, the Office properly denied modification of the August 1, 2008 termination decision.

### **CONCLUSION**

The Board finds that the Office met its burden of proof in terminating appellant's wage-loss compensation and medical benefits effective August 31, 2008. The Board further finds that appellant did not meet his burden of proof to establish that he had any work-related disability or medical condition after August 31, 2008.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the decisions of the Office of Workers' Compensation Programs dated December 17 and August 1, 2008 are affirmed.

Issued: October 16, 2009  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>11</sup> See *Roger G. Payne*, 55 ECAB 535 (2004).